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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 21-00155
)	
CARLOS E. KEPKE,)	
)	
Defendant.)	
_____)	

San Francisco, California
Monday, January 24, 2022

TRANSCRIPT OF VIDEOCONFERENCE PROCEEDINGS

APPEARANCES: (via videoconference)

For Plaintiff:

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For Defendant:

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REPORTED BY: Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter

Monday - January 24, 2022

12:01 p.m.

P R O C E E D I N G S

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THE CLERK: Calling criminal 21-155, United States of America versus Carlos E. Kepke.

Counsel for the Government.

MR. PITMAN: Good morning, Your Honor, Michael Pitman for the government.

THE CLERK: Counsel for the Defendant.

MR. FONDO: I guess good afternoon, Your Honor, counsel for Mr. Kepke. Mr. Kepke is appearing via Zoom, as am I; and we consent to this appearance by Zoom due to the pandemic.

THE COURT: Okay. We are here for trial. The trial date -- that date is just way too far out. We are going to try this case this year. I am assuming -- I would like to try it on May 9th. Is there any reason not to?

MR. PITMAN: Yes, Your Honor. I do have a conflicting trial this spring. So I have got a trial start to set in the last week of April that will continue through most of the month of May.

That was a Judge Koh case that was recently assigned to Judge Tigar. I'm not sure he is going to keep that trial date. That is a conflict as of now.

THE COURT: Let's do this: You need to pick a date

1 some time in, you know, May through August -- actually May
2 through July of this year; okay. And just tell me the date.
3 Just give me two options, all right; and just file a joint
4 statement that says all that.

5 Then we can work backward on all of this. I mean, why are
6 there going to be Daubert witnesses, Mr. Fondo?

7 **MR. FONDO:** Your Honor --

8 **THE COURT:** Yeah.

9 **MR. FONDO:** There may be, Your Honor. It is a
10 complicated tax fraud case.

11 I don't know, for example, if the Government is intending
12 to have experts; but we may have experts to talk about and
13 discuss for the benefit of the jury some of the tax issues in
14 this case.

15 It's -- we have not made a final determination on that,
16 but it is not uncommon to have -- at least we believe from the
17 Defense side -- to have an expert address some of these issues.

18 **THE COURT:** I have had several taxes cases. This is
19 the first time anyone has ever raised an expert.

20 Mr. Pit man, are you anticipating any experts?

21 **MR. PITMAN:** Yes, Your Honor, the Government will be
22 calling at least one expert witness.

23 **THE COURT:** Okay, all right. Have you disclosed the
24 opinions? You got all that or what is happening with all that?

25 **MR. PITMAN:** We have not, Your Honor. That disclosure

1 schedule was built into the proposal that we submitted to
2 Your Honor, but obviously we will have to adjust that in light
3 of a new date.

4 **THE COURT:** It can't be terribly complicated; right.

5 **MR. PITMAN:** I think it will be complicated for a jury
6 such that expert testimony is helpful.

7 I don't think that the concepts are anything that is going
8 to be controversial or confusing to Counsel for sure or the
9 Court.

10 **THE COURT:** Okay. Okay. Well, let's just shoot for a
11 trial date in that time period. But, you know, a year from now
12 is just way too far out -- more than a year. That's like 17
13 months from now. It's just way too far out for a case like
14 this. Okay.

15 **MR. FONDO:** Your Honor, if I may?

16 **THE COURT:** Yeah.

17 **MR. FONDO:** So we don't -- there is a massive amount
18 of discovery that has been produced in this case. It has been
19 designated as a complex case. It is over 2 million pages.

20 The other team to my understanding has still not finished
21 its review in this case. There is -- obviously my client is an
22 attorney.

23 This is a conspiracy that is alleged over 15 years
24 involving ten different countries, bank accounts, witnesses, et
25 cetera in various countries.

1 This is an extremely complex case, and the Defense would
2 request additional time to prepare for trial.

3 **THE COURT:** Well, I mean, the case has been pending
4 for almost a year now he was indicted in 2021, April; filed.
5 I'm not going to try the case two years from now. It is way
6 too long out.

7 So, if you want to do it -- look, just pick a date in
8 2022. I cannot do it in November or December because I'm
9 totally booked. So, work on some date in 2022.

10 If there is some serious reason other than, you know, it
11 is a lot of work, I will think about it; but if it is just a
12 lot of work, bring more resources and get it done. I mean,
13 that is the resource allocation issue.

14 If there is some other holdup, I would be happy to hear
15 it; but, you know, you are in federal court. We do nothing but
16 complex cases. So, let's just get this going and get it
17 rolling. And let's not let the size of the discovery be a
18 reason in itself that it really shouldn't be.

19 It is just a matter of getting more hands and eyes on the
20 documents.

21 So, see what you can work out. And if there is some
22 serious problem, I will take a look at it. Okay.

23 So, how about -- how long do you want to do it,
24 Mr. Pitman? Two weeks from today, three weeks, four?

25 **MR. PITMAN:** I defer to Mr. Fondo. I'm available, so.

1 **THE COURT:** Okay. Mr. Fondo?

2 **MR. FONDO:** Your Honor, I would say approximately
3 three weeks. That will give us -- the parties an opportunity
4 to further discuss this.

5 **THE COURT:** All right. If you cannot reach an
6 agreement on the date, the 22nd -- I will be a little bit
7 surprised if you can't -- if you can't I need a detailed
8 statement of the reasons why and some explanation why this case
9 can't be tried in a timely fashion.

10 Okay. Anything else for today, Mr. Pitman?

11 **MR. PITMAN:** No, Your Honor. Just move for a finding
12 of excludable time given the discovery that has been produced
13 and the Defense efforts to process that and prepare the case
14 for trial.

15 **THE COURT:** All right. You want to put a date on that
16 of some sort?

17 **MR. PITMAN:** Well, if we are coming back in three
18 weeks, Your Honor, is that available?

19 **THE COURT:** Oh, no. I'm just going to get the paper.
20 I wasn't going to have you back in. I was just going to get
21 your statement and then order a trial date or something. So,
22 want to set another status conference for some time?

23 **MR. PITMAN:** I think that's probably a good idea,
24 Your Honor, either way.

25 **THE COURT:** Okay. How about we will set one for

1 March 21st? How about that?

2 **MR. PITMAN:** I'm available, Your Honor.

3 **MR. FONDO:** I'm available as well, Your Honor.

4 **THE COURT:** I will set a further status for
5 March 21st. And, Defendant, you agree to exclude trial on the
6 grounds that Mr. Pitman proposed?

7 **MR. FONDO:** Yes, the Defense does, Your Honor.

8 **THE COURT:** All right. So I will exclude time for
9 effective preparation between now and March 21st, 2022.

10 And three weeks from today at the latest -- you can always
11 beat that -- but three weeks from today at the latest you have
12 to submit a date -- a joint filing identifying a trial date or
13 some good explanation about why you can't get one.

14 Okay. Anything else, Mr. Pitman?

15 **MR. PITMAN:** No. Thank you, Your Honor.

16 **THE COURT:** Mr. Fondo?

17 **MR. FONDO:** No. Thank you, Your Honor.

18 **THE COURT:** Okay. Great. Okay. Thanks very much.

19 **MR. FONDO:** Thank you, Your Honor.

20 (Proceedings adjourned at 12:08 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, February 1, 2022

A handwritten signature in blue ink that reads "Marla Knox". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter